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OCT - 6 1997

October 6, 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BY HAND

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Reply Comments of Philips Electronics North America Corporation
and Thomson Consumer Electronics, Inc. in CS Docket No. 95-184
and MM docket No. 92-260

Dear Mr. Caton:

Enclosed for filing please find the original and eight (8) copies of the Reply Comments of Philips Electronics North America Corporation and Thomson Consumer Electronics, Inc. in the above-referenced dockets.

Please direct any questions that you may have to the undersigned.

Respectfully submitted,

Lawrence R. Sidman

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Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
Telecommunications Services)
Inside Wiring)

CS Docket No. 95-184

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Customer Premises Equipment)

In the Matter of)
Implementation of the Cable)
Television Consumer Protection)
and Competition Act of 1992)

MM Docket No. 92-260

Cable Home Wiring)

REPLY COMMENTS OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION AND
THOMSON CONSUMER ELECTRONICS, INC.

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October 6, 1997

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
Telecommunications Services)	CS Docket No. 95-184
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)	
Customer Premises Equipment)	
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and Competition Act of 1992)	
)	
Cable Home Wiring)	

REPLY COMMENTS OF
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION AND
THOMSON CONSUMER ELECTRONICS, INC.

Philips Electronics North America Corporation ("Philips") and Thomson Consumer Electronics, Inc. ("Thomson") submit these reply comments in the above-captioned Further Notice of Proposed Rulemaking ("Further Notice") to amend the Commission's inside wiring rules governing the disposition of cable inside wiring.

I. THE ONLY CLEAR CONSENSUS AMONG INTERESTED PARTIES IS THAT THE COMMISSION'S PROPOSED FRAMEWORK IS NOT WORTHY OF ADOPTION ABSENT SIGNIFICANT MODIFICATION.

First and foremost, Philips and Thomson recognize the difficult task facing the Commission as it tries to complete its cable inside wiring proceeding which has been pending at the Commission for a number of years. Presented with a number of demanding and

complex issues, the Commission has attempted to craft a compromise proposal which is embodied in the Further Notice. However, while it *may be* marginally better than the status quo, the compromise proposal is not the elixir to the anticompetitive ills rampant in multiple dwelling units ("MDUs"). It does not get to the heart of the barriers to entry in the MDU market and consequently fails to ensure that viewers residing in MDUs have a choice in programming options available on direct broadcast satellite ("DBS") service, and in the near future, over-the-air digital television.

Many commenters, including Philips and Thomson, believe the Commission's proposed compromise falls far short of the procompetitive solution that is necessary.^{1/} At the opposite end of the spectrum, incumbent cable operators object to the Commission's proposal.^{2/} Even those commenters supporting the Commission's broad outline offer amendments which, although denominated as minor, in reality materially affect the proposal.^{3/} In short, the only clear consensus is against adoption of the Commission's proposal in its current form. Moreover, the relief potentially offered by the Commission's proposed rules is so modest that

^{1/} See, Comments of Media Access Project In the Matter of Telecommunications Services Inside Wiring (Customer Premises Equipment) and Implementation of the Cable Television Consumer Protection and Competition Act of 1992 (Cable Home Wiring), CS Docket No. 95-184, MM Docket No. 92-260, ["Further Notice"] (filed Sept. 25, 1997) at 7; DIRECTV, Further Notice at 7.

^{2/} See, Comments of Adelphia Cable Communications, et al., Further Notice at 17-32; Comments of Tele-Communications, Inc., Further Notice at 1-2; Comments of Time Warner Cable, Further Notice at 7; and Comments of Cablevision Systems, Further Notice at 2.

^{3/} See, Comments of GTE, Further Notice at 6; Comments of Wireless Cable Association International, Inc., Further Notice at 1-4; Comments of SBC Communications Inc., Further Notice at 1; Comments of Independent Cable and Telecommunications Association, Further Notice at 2; Comments of Heartland Wireless Communications, Inc., Further Notice at 3.

it is inconsistent with Congress' insistence that more dramatic procompetitive measures be taken to increase competition in the MVPD market.^{4/}

If part of the Commission's attraction to its proposed compromise is the belief that it will avoid subsequent litigation by incumbent cable operators, a review of the comments filed suggests such a notion likely will prove illusory. It is quite clear from its comments that the cable industry is laying the predicate to a judicial challenge on the ground that the Commission lacks sufficient legal authority to implement even these modest changes to its current inside wiring rules.^{5/} As a matter of public policy, there is very little to commend the Commission adopting what it knows to be an incremental and flawed approach to promoting MVPD competition in MDUs,^{6/} when the cable industry stands poised to challenge even this small step taken on behalf of viewers.

^{4/} Hearing on Multichannel Video Competition Before the Senate Committee on Commerce, Science, and Transportation, 105th Cong., 1st Sess. (April 10, 1997) ("Senate Video Competition Hearing") (statement of Senator John McCain, Chairman (R-AZ)): "In sum, I remain concerned that competition in the multichannel video market today is not as vigorous as it will have to be to effectively constrain cable rates. Today, I hope to gain an insight on what must be done to assure that competition will measure up to the task by 1999."; Hearing on Video Competition: The Status of Competition Among Video Delivery Systems, 105th Cong., 1st Sess. (July 29, 1997) ("House Video Competition Hearing") (statement of Representative Billy Tauzin, Chairman (R-LA)): "[A] year and a half following the enactment and signature into law of the 1996 Act which calls for immediate and spontaneous and vigorous competition for the provision of video services . . . we are still awaiting the day when consumers have real, full, active competition available to them in every community of our country."

^{5/} See, e.g., Comments of NCTA, Further Notice at 6.

^{6/} "The record in our cable home wiring proceeding (MM Docket No. 92-260) indicates that the current cable demarcation point in multiple dwelling unit buildings may impede competition in the video programming marketplace." Telecommunications Service Inside Wiring (Customer Premises Equipment), *Notice of Proposed Rulemaking*, 11 FCC Rcd 2747, 2756-57 (1996).

Rather, the Commission should heed the requests of many commenters and proceed down a path that is overtly competitive. The Commission should simply move the cable demarcation point to a position that enables aspiring competitors to use already present cable inside wiring, *i.e.*, at the lockbox where the wiring enters the building or at the lockbox(es) within a building where the homerun wire originates.^{7/} Such a solution stands on firm legal footing because the authority to move the cable demarcation point may be drawn from Section 207 of the Telecommunications Act of 1996.^{8/}

In the event the Commission decides to adopt the framework proposed in the Further Notice, it should do so only with the explicit recognition that it represents the first in a series of steps the Commission will take to address the competitive problems in MDUs. The Commission must not send the wrong signal and close the chapter on inside wiring with the completion of this proceeding when far more needs to be done.

^{7/} See, Comments of Independent Cable & Telecommunications Association, Further Notice at 2; Comments of Philips and Thomson, Further Notice at 10; Comments of the Consumer Electronics Manufacturers Association, Further Notice at 4; Comments of DIRECTV, Further Notice at 9; Comments of Media Access Project, Further Notice at 19.

^{8/} Telecommunications Act of 1996, § 207, Pub. L. No. 101-104, 104th Cong., 1st Sess. § 207, 110 Stat. 56, 114 (1996).

**II. THE COMMISSION'S AUTHORITY CONTAINED IN SECTION 207
COUPLED WITH ITS ANCILLARY AUTHORITY IN SECTIONS 4(i) AND
303(r) PERMIT IT TO MOVE THE CABLE DEMARCATION POINT TO AN
OVERTLY PROCOMPETITIVE POSITION**

Some commenters rely on the language and legislative history of Section 624 of the Communications Act^{9/} to support their contention that the Commission does not have the authority to implement rules governing the common wiring within an MDU.^{10/} Section 624(i) directs the Commission to "prescribe rules concerning the disposition, after a subscriber to a cable system terminates service, of any cable installed by the cable operator within the premises of such subscriber." In accompanying Committee reports, Congress clarified that Section 624(i) "is not intended to cover common wiring within the [MDU] building, but only the wiring within the dwelling unit of individual subscribers."^{11/} Nothing in the explicit language of Section 624(i) or the accompanying legislative history, however, prohibits the Commission from regulating the common wiring within an MDU building. It merely says that the Commission cannot derive such authority from the confines of Section 624(i). Indeed, the fact that Section 624(i) does not explicitly provide the Commission with the authority to regulate common wiring within an MDU building is wholly irrelevant to the issue of whether

^{9/} 47 U.S.C. Section 544(i).

^{10/} See, Comments of U S WEST, Inc., Further Notice at 4; Comments of GTE, Further Notice at 17; Comments of Time Warner, Further Notice at 49; Comments of Telecommunications, Inc., Further Notice at 4; Comments of NCTA, Further Notice at 6; Comments of Cable Telecommunications Association, Further Notice at 3; Comments of Jones Intercable, Further Notice at 2.

^{11/} H. R. Rep. No. 628, 102d Cong., 2d Sess. 119 (1992) ["House Report"]; See also S. Rep. No. 92, 102d Cong., 1st Sess. 23 (1991) ["Senate Report"].

or not the Commission has been granted such authority to promulgate rules governing such wiring elsewhere in the Communications Act.

Section 207 instructs the Commission to issue regulations prohibiting restrictions that "impair a viewer's ability to receive" programming services via the use of DBS, over-the-air broadcast and wireless cable antennas. The successful implementation of the Section 207 is clearly dependent upon a complementary ruling in this inside wiring proceeding. If residents in MDUs are to be able to receive off-air digital broadcast signals and DBS services as envisioned by Section 207, they must not only be able to request placement of a receiving apparatus on the roof or on a balcony but also be able to receive those signals in their living units. In other words, the Section 207 proceeding and the instant inside wiring proceeding each represent half the equation equaling viewer choice in programming options. A viewer must have access to the signals at both points, for one without the other results in an effective denial of service. Therefore, the Commission's ability to fulfill the legislative mandate of Section 207 hinges on its ability to craft rules that provide aspiring competitors access to the common wiring in an MDU.

The ancillary authority contained in Sections 4(i) and 303(r) permit the Commission to adopt rules to meet its obligations specified in other sections of the Act.^{12/} Section 4(i) provides that "[t]he Commission may perform any and all acts, make such rules and

^{12/} Iowa Utilities Board v. FCC, 120 3d 753, 795 (8th Cir. 1997) citing California v. FCC, 905 F.2d 1217, 1241 n.35 (9th Cir. 1990).

regulations, and issue such orders, not inconsistent with this chapter [47 U.S.C. Sections 151-613], as may be necessary in the execution of its functions."^{13/} Similarly, Section 303(r) provides in part that, "as public convenience, interest, or necessity requires, the Commission shall "[m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this chapter [47 U.S.C. Sections 151-613]."^{14/} Section 207 clearly places an obligation on the Commission to promulgate rules that prohibit restrictions on a viewer's ability to receive programming via the use of DBS, over-the-air broadcast and wireless cable antennas. It is entirely consistent and indeed necessary to regulate inside wiring found in the common areas of MDUs utilizing the grant of authority contained in Sections 4(i) and 303(r) if the legislative mandate of Section 207 is to be fulfilled.

V. CONCLUSION

For the reasons stated above, the Commission should decline to adopt the proposal in the Further Notice and, instead, should move the cable demarcation point to the lock box at the point of entry to the building or at the point of origination of the home run wire to achieve the guaranteed access by viewers to broadcast, DBS and wireless cable services mandated by

^{13/} 47 U.S.C. Section 154(i).

^{14/} 47 U.S.C. Section 303(r).

Section 207. Should the Commission adopt its proposed framework, it should clarify that it is only the first step in a process to spur genuine MVPD competition in MDUs.

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Dated: October 6, 1997